

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED  
DEC 30 2005  
Michael N. Milby, Clerk

JOHN BLACKMER, D/B/A  
JOHN BLACKMER PHOTOGRAPHY,  
Plaintiff

VS

QUALITY PUBLISHING, INC., and  
QUALITY PUBLISHING SERVICES, INC.  
Defendants

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CASE NO. **05 4393**

Original Complaint:

Copyright Infringement

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

1. Plaintiff, John Blackmer, doing business as John Blackmer Photography ("Blackmer" or "Plaintiff"), for his complaint against Defendants, Quality Publishing, Inc. ("QP"), and Quality Publishing Services, Inc. ("QPS") or collectively, "Defendants, alleges:

JURISDICTION/VENUE

2. This claim arises under the copyright laws of the United States, 17 U.S.C. 101 *et seq.*, (hereinafter the Copyright Act.).

3. Subject matter and personal jurisdiction is vested in this Court pursuant to 28 U.S.C. 1338. Additionally, this Court has subject matter jurisdiction under 28 U.S.C. 1331 inasmuch as this claim arises under the copyright laws of the United States. Venue in this judicial district is proper pursuant to 28 U.S.C. 1400(a) and 28 U.S.C. 1391(b) and (c).

### **THE PARTIES**

4. **John Blackmer**, D/B/A John Blackmer Photography (hereinafter, Blackmer), is an individual citizen of Texas engaged in the business of professional photography, and who resides and has a principal place of business in Sugar Land, Fort Bend County, Texas.

5. **QP** is a Texas corporation in the business of publishing high-end home interior design and construction magazines, having corporate offices in Houston, Texas. It will receive actual notice of the filing of this complaint by service of same upon its registered agent for service of process, Laurette Veres, 718 Sul Ross, Houston, Texas 77006.

6. **QPS** is a Texas corporation in the business of publishing high-end home interior design and construction magazines, having corporate offices in Houston, Texas. It will receive actual notice of the filing of this complaint by service of same upon its registered agent for service of process, Laurette Veres, 718 Sul Ross, Houston, Texas 77006.

### **INTRODUCTORY FACTS**

7. Blackmer is a professional photographer, and is the author (photographer) of, and at all times relevant to this claim, has been and is now the sole owner and proprietor of all right, title and interest in and to the copyrights in certain collections of photographs known as "Builder & Developer Photographs, Volume 11." The photographs within this collection were originally created by Blackmer for advertising use by home-builders, interior designers and artisans to the trade.

8. Blackmer has complied in all respects with Title 17 of the United States Code (Copyright Act of 1976) and all other United States laws governing copyrights, and has secured the exclusive rights and privileges in and to the copyrights to the above-described photograph.

9. Blackmer owns certain rights in and to Copyright Registration Number VAu 537-277 issued by the U. S. Registrar of Copyrights in Washington, D.C. for photographs within this collection of images deposited with and covered by said registration (**Exhibit A, Registration Certificate**). One image deposited with the application for copyright is attached hereto as **Exhibit B**.

10. Blackmer's copyright in the above-described work is presently valid and subsisting, and was valid and subsisting from the moment of its creation in 2002, and all conditions precedent to the filing of this suit have occurred.

#### **INFRINGEMENT FACTS**

11. In early December of 2005, Blackmer first became aware that Defendants had, without authorization, placed at least one of his images on its magazine masthead (**Exhibit C**).

12. Once Blackmer appreciated this masthead infringement by Defendants, he visited their offices and tried to quantify the number of magazines that used his image. Defendants referred the matter to their in house lawyer, who accused Blackmer of being "adversarial" when all he was trying to do was quantify the infringements so that he could

provide Defendants with an invoice. Defendants' attorney refused to permit Blackmer's review of their archive issues, and, even though the clerk initially offered to sell Blackmer the past issues, Defendants' attorney refused to sell them to Blackmer, and told him she'd get back to him.

13. Defendants' attorney called Blackmer on December 14, 2005, and said Defendants had been given permission to use Blackmer's photograph by Westport Homes, and that this was an issue Blackmer would need to take up with Westport Homes. Defendants' attorney still denied Blackmer access to their publication's archives.

14. Blackmer met with David Moore, President of Westport Homes, on December 16, 2005. Mr. Moore said that Westpoint Homes never told Defendants that they could use Blackmer's photograph in their magazine masthead.<sup>1</sup>

15. Blackmer mailed a letter to Defendants' attorney on December 19, 2005 seeking information from which to calculate a past license fee, but Defendants have failed and/or refused to cooperate with Blackmer. **(Exhibit D).**

16. Upon further investigation, Blackmer has discovered that Defendants had used his copyrighted image in another of its publications **(Exhibit E).**

17. Blackmer is still being denied access to Defendants' past publications, and is presently unable to assess fees/damages for these past unauthorized uses of his works. Based on Defendants' statements to Blackmer, Defendants are still asserting that they

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<sup>1</sup>Even had Westport Homes told Defendants that they could use the image, it did not have license to do so.

have the right to use his photography as they please, and upon information and belief, Exhibit B is still being digitally-stored on Defendants' computers.

### **CAUSES OF ACTION**

18. Thus, for many months, and without Blackmer's authorization, Defendants have willfully infringed Plaintiff's copyrights in and to the above-described image by publishing and/or otherwise using, and/or by scanning, copying, and/or reproducing unauthorized copies of said photographs within the United States.

### **CAUSATION/DAMAGES**

19. As a direct and proximate result of Defendant's above-described acts of copyright infringement, Blackmer has sustained actual damages in an amount not yet ascertained. Such actual damages include, but are not limited to, lost profits and/or lost licensing revenue, and dilution of the market value of an image so prolifically-used.

### **RELIEF REQUESTED**

20. Blackmer demands an accounting by Defendant of its activities in connection with its infringements of his copyrights in and to **all** his images, including but not limited to the masthead use, as well as its gross profits and income derived therefrom.

21. Blackmer is entitled to and seeks to recover his actual damages, plus the profits of Defendants attributable to the infringement(s).

22. Alternatively, because the image – known *so far* to have been infringed – was registered prior to Defendants' infringements, Blackmer is entitled to and seeks to recover

statutory damages up to but not exceeding \$150,000.00 (One hundred fifty thousand dollars), plus all reasonable and necessary attorneys fees, expenses and costs of court.

**BLACKMER DEMANDS JUDGMENT AS FOLLOWS:**

23. Defendants, their agents, employees and/or servants be enjoined *pendente lite* and permanently from infringing Blackmer's copyrights in any manner whatsoever, and from publishing through any visual media, and from selling, marketing or otherwise distributing any of his images;

24. That Defendants be required to deliver-up, under oath, for impounding during the pendency of this action, and for destruction thereafter, all images and publications which infringe Blackmer's copyrights, and all prints, film negatives, magnetic tapes, digitally scanned and/or stored images, and all other articles by means of which such infringing copies may be reproduced, which are in the possession or under the direct or indirect control of Defendants;

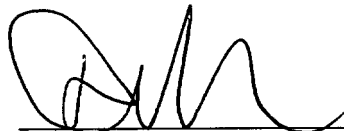
25. That Defendants be required to pay over to Blackmer his actual damages sustained, in addition to all profits of Defendants attributable to the infringements, which are not taken into account in computing Blackmer's actual damages incurred as a result of Defendants' copyright infringements described herein, as well as those discovered through litigation;

26. That Defendants provide an accounting of all gains, profits and advantages derived by it as a result of the willful and unlawful acts of copyright infringement above-described;

27. That Defendants pay to Blackmer his expenses, costs and attorney's fees; and
28. That Blackmer have such other and further relief as this court shall deem just and proper.

**Plaintiff, John Blackmer, D/B/A John Blackmer Photography, demands a jury trial in this cause of action.**

Respectfully submitted,

By: \_\_\_\_\_

Dana A. LeJune  
SBN: 12188250  
3006 Brazos Street  
Houston, Texas 77006  
713/942-9898  
713/942-9899 (Fax)  
ATTORNEY FOR PLAINTIFF,  
JOHN BLACKMER, D/B/A  
JOHN BLACKMER PHOTOGRAPHY

## CERTIFICATE OF REGISTRATION



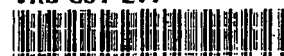
This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

FORM VA

For a Work of the Visual Arts  
UNITED

REGISTI

VAU 537-277



EFFECTIVE DATE OF REGISTRATION

5 21 02  
Month Day Year

OFFICIAL SEAL

REGISTER OF COPYRIGHTS

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

NATURE OF THIS WORK ▼ See instructions

Builder & Developer Photographs, Volume #11 Photographs

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

NAME OF AUTHOR ▼

John H. Blackmer

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

8/26/59

Was this contribution to the work a "work made for hire"?

☐ Yes☒ No

Author's Nationality or Domicile

Name of Country

OR { Citizen of ▼ U.S.A.

Domiciled in ▼

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ NoPseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture☐ Map☐ Technical drawing☐ 2-Dimensional artwork☒ Photographs☐ Text☐ Reproduction of work of art☐ Jewelry design☐ Architectural work

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes☐ No

Author's Nationality or Domicile

Name of Country

OR { Citizen of ▼

Domiciled in ▼

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture☐ Map☐ Technical drawing☐ 2-Dimensional artwork☐ Photograph☐ Text☐ Reproduction of work of art☐ Jewelry design☐ Architectural work

Year in Which Creation of This Work Was Completed

2002

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month ▼

Day ▼

Year ▼

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

John H. Blackmer  
7023 Morningside Dr.  
Sugar Land, TX 77479

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

MAY 21, 2002

ONE DEPOSIT RECEIVED

MAY 21, 2002

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

DO NOT WRITE HERE  
OFFICE USE ONLYPLAINTIFF'S  
EXHIBIT

DO NOT WRITE HERE

Page 1 of 2 pages

MORE ON BACK ▶

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page  
• See detailed instructions • Sign the form at line 8

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

3

4

See instructions before completing this space



EXAMINED BY

FORM VA

CHECKED BY

☐ CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. ☐ This is the first published edition of a work previously registered in unpublished formb. ☐ This is the first application submitted by this author as copyright claimantc. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

John H. Blackmer  
7023 Morningside Dr.  
Sugar Land, TX 77479

Area code and daytime telephone number ▶ (281) 343-8205

Fax number ▶ (281) 343-8208

Email ▶ jblackmere@aol.com

CERTIFICATION\* I, the undersigned, hereby certify that I am the

check only one ▶

☒ author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

John H. Blackmer

Date ▶ 5-18-02

Handwritten signature (X) ▼



X

Certificate  
will be  
mailed in  
window  
envelope to  
this  
address:

Name ▼

John H. Blackmer

Number/Street/Apt ▼

7023 Morningside Dr.

City/State/ZIP ▼

Sugar Land, TX 77479

## YOU MUST

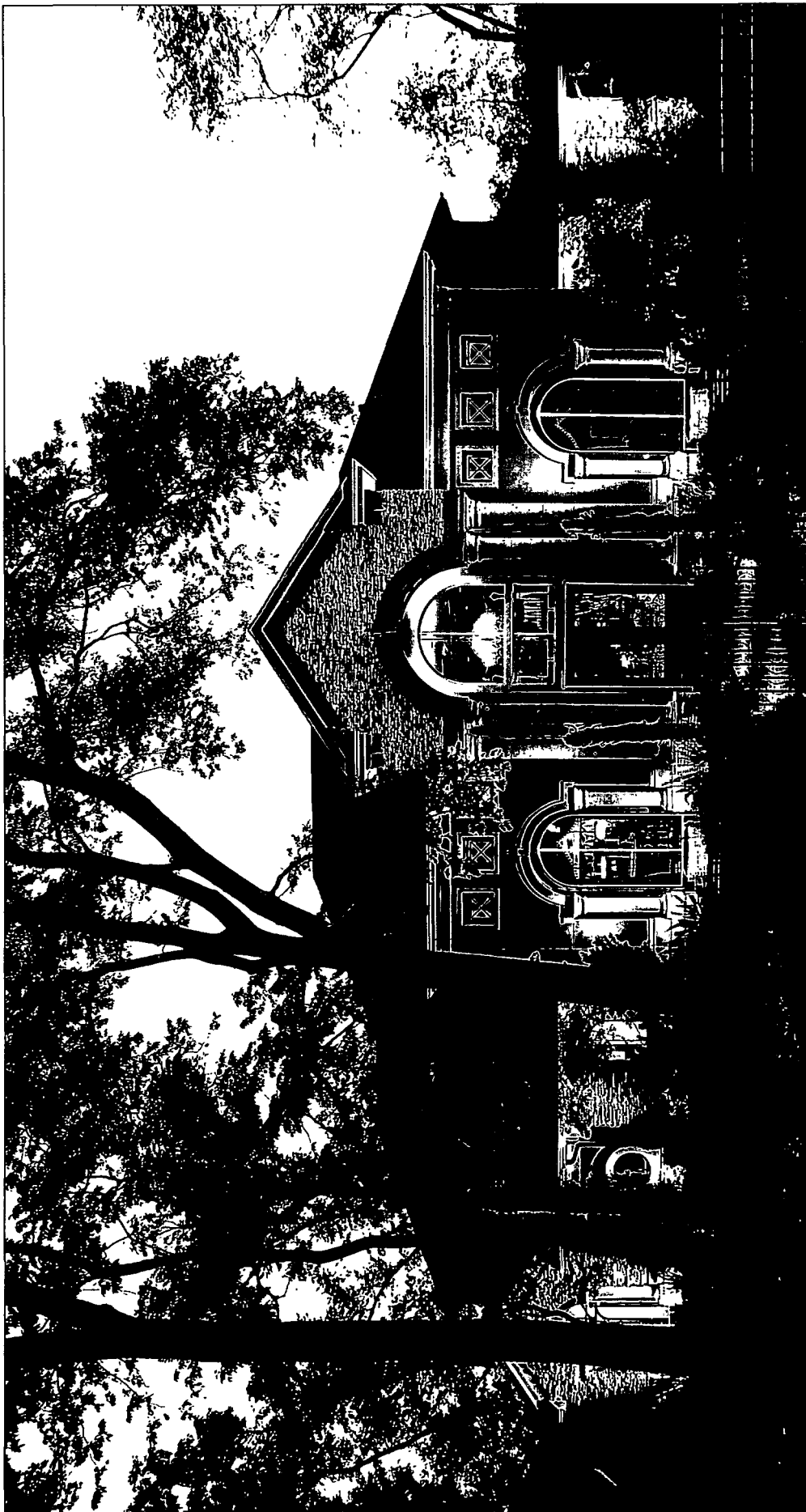
- Complete all necessary spaces
- Sign your application in space 8

YOU MUST ALSO COMPLETE  
ON THE SEPARATE PAGE

- Application form
- Nonrefundable filing fee in check or money order payable to Register of Copyrights
- Deposit material

## MAIL TO

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000



© 2002 John Blackmer  
Copyright Certificate of Registration:  
VAu 537-277

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# inside houston

THE ESTABLISHED MAGAZINE

RI

## EIGHTH ANNIVERSARY ISSUE ROUND EIGHT

George Foreman, retired heavyweight  
boxing champion and inventor



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How has Houston changed  
over the past 8 years?  
We asked some notable  
Bayou City dwellers

PLUS

AEROS HOCKEY • INSIDE HOUSTON HOMES • JOHN DEMERS ON YAMS

HOUSTON  
**HOMES**  
SEPTEMBER 2002

## A MESSAGE FROM THE PUBLISHER

Nothing says "home" quite like the holidays. As families gather in celebration, we are reminded that this is a special time of year when we take refuge in our homes as a place of personal sanctuary. That's what you'll find in this issue of *Inside Houston Homes*. In our second issue, we look at some very special spaces in our city and talk to the experts who create them.

Few people know the joys of coming home as well as professional athletes. With work schedules that stretch year-round and coast-to-coast, athletes adopt a transient lifestyle that makes coming home especially sweet. In this issue, we go inside the home of **Darryl Hamilton**, retired major league baseball player. After retiring from the New York Mets, Hamilton was looking for his own sanctuary for his wife Ursaline and his two children. Come along as we go inside their own "**Home Game.**"

Looking for ways to make your home into a personal sanctuary? We talk to two local experts who know all of the ins and outs of making your house a home. **Charles Cohen**, whose **Decorative Center of Houston** is regarded as the premier resource for high-end furnishings, fabrics and more, shares his secrets to success. And **Sherry Renfrow Moore's Designer Showcase** provides the design expertise to transform your home into a niche of casual elegance.

Houston has no shortage of beautiful homes. And *Inside Houston Homes* will continue to bring them to you, plus everything you need to make your home even more beautiful.

Have a safe and joyous holiday season. ■

Enjoy!

*Laurette M. Veres*

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web designer

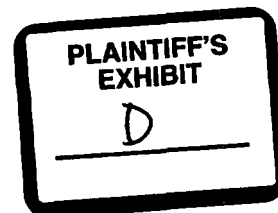
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human resources manager

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Cassandra Hollemon  
General Counsel  
Human Resources Manager  
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Quality Publishing Services, Inc.  
523 N. Sam Houston Pkwy, East  
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December 19, 2005

Dear Ms. Hollemon:

I visited with David Moore, President of Westport Homes this past Friday, and contrary to what you told me last Wednesday, he assured me his company **did not** authorize the use of my photography on your "Message from the Publisher" page (November/December 2002 issue of Inside Houston Magazine, pg. 66). My photography was provided to your publication, with the specific terms of one-time editorial use in your "Million Dollar Homes Issue" of Inside Houston (September 2002), and the credit line, "Westport Homes/Photo by John Blackmer" was to accompany any use of my photography in this story. This use on the "Message from the Publisher page" is not editorial, it does not pertain to any story or Westport Homes, and it does not have the required credit line. In short, your publication had no rights whatsoever to use my photograph in this manner.


Based on my conversation with you, I am extremely concerned about the position your publication is taking on the photography of mine that is in your system: **Quality Publishing does not own any usage rights to any of my photography.** Quality Publishing has used this copyrighted work without license, and you appear to be comfortable in continuing to do so. This is wrong.

However, I am still extending you the courtesy of trying to resolve this issue in an amicable fashion. Here are the items of concern that should be immediately addressed in a businesslike fashion:

1. Approximately 13 of my copyrighted photographs of Westport Homes' product were provided to your publication, for one-time editorial use in the story "Style in the City" (Inside Houston Magazine, September 2002). All copies of these works, in all formats, must be immediately returned to me. Please, however, do not delete any of them that now exist on any of your computer servers, at least until someone with your companies provides an affidavit as discussed below.

2. I am still willing to provide Quality Publishing a retroactive license to restore copyright compliance, but I can only do so by reviewing your companies' past publications to be able to calculate the fee amount for such a license. By so doing, not only will I be able to establish a reasonable license fee for this (and any other) past unauthorized use of my works, but I will be able to bring to your publication's attention which photographs are mine (that you may be continuing to use). This will help protect you from infringing on my copyrighted works in the future. Once the extent of unauthorized use of my images is established, and in conjunction with accomplishing number one above, I will require an affidavit of compliance from someone with the requisite knowledge within your companies.



John  Blackmer

3. When I visited your offices earlier this month, I asked to review archives of the 2002-2005 issues of "Inside Houston" and "Greater Houston Home Buyer's Guide." Prior to speaking with you, the woman who was assisting me went to get these issues from your archives, and then told me I could buy copies of these past publications. At that point you entered the picture, and after learning about the purpose of my visit, you accused me of having an adversarial tone, and refused to allow me to review the past publications. Please understand that if I am not provided the opportunity to review the past issues of these magazines, I will be forced to acquire the information another way. Therefore, should your companies stand on their refusal to allow me to review its archives on site, please let me know whom to contact about buying them.

I hope to resolve this matter amicably, and before the end of the year. Therefore, please respond to these issues in writing, and as soon as possible.

Sincerely,



John Blackmer

# Inside Houston

THE ESTABLISHED T A G A Z I

**DRAYTON MCLANE**

## on the RIGHT TRACK

APRIL 2003

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04>



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With a new season underway, this downtown market maker ponders urban renewal, the club's hopes for success and the difficulty in hitting a baseball.

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**SALSA-TIONAL**

John DeMers takes in some salsa dancing

**HOME TIME**

Add flair to your lair with fresh interior ideas

**PLUS**

FASHIONS FROM SUSAN DELL • INSIDE HOUSTON HOMES • DINING

# HOUSTON HOMES

APRIL 2003

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CATHERINE GRABER  
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Inside Houston Homes  
volume 2, number 1 april 2003  
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tel 281/272/2744 fax 281/272/9909

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## A MESSAGE FROM THE PUBLISHER

Springtime in Houston is characterized by a renewed vigor in updating our surroundings. A large part of this process takes place inside our homes, and *Inside Houston Homes* is right in line in this month's issue.

One area of home decor that can take a room from good to great is in the selection and effective use of accessories. **Sherry Renfrow Moore** of **Designer's Showcase** outlines some helpful strategies to go about accessorizing a room with style. Read all about it beginning on page 36.

Another key aspect in the feel of a living space is in the selection of color. We've all stood in front of baffling paint displays, feeling quite overwhelmed by the enormous selection of colors available. Well, fear not – help is here. In "The Power of Color," **Gil Warrick** of **Allyson Jon Interiors** explains what colors evoke certain responses and how to effectively use color – not only in paint but also in other decor components – to achieve the right feel for any given space.

With *Inside Houston Homes* as your guide, you can safely navigate the myriad choices available when doing home spruce ups.

Have a happy and productive spring in the Bayou City. ■

Enjoy!

*Laurette M. Veres*

Laurette  
Publisher/Editor-in-Chief  
*Inside Houston Homes*

### ON THE COVER

this stylishly appointed study exemplifies the effective use of accessories  
photograph by bruce glass photography • used courtesy of sherry renfrow moore's designer showcase